

## § 261.6

## 37 CFR Ch. II (7–1–04 Edition)

but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to such Receiving Agent or Designated Agent(s) or person.

(f) Books and records of a Licensee, the Receiving Agent and of a Designated Agent relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than three (3) years.

### § 261.6 Verification of statements of account.

(a) *General.* This section prescribes general rules pertaining to the verification of the statements of account by the Designated Agent.

(b) *Frequency of verification.* A Designated Agent may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior three (3) calendar years, and no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Designated Agent must submit a notice of intent to audit a particular Licensee with the Copyright Office, which shall publish in the FEDERAL REGISTER a notice announcing the receipt of the notice of intent to audit within thirty (30) days of the filing of the Designated Agent's notice. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Designated Agents, and all Copyright Owners and Performers.

(d) *Acquisition and retention of records.* The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than three (3) years. The Designated Agent requesting the verification procedure shall retain the report of the verification for a period of not less than three (3) years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordi-

nary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all Designated Agents with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Designated Agent, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Designated Agent requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of ten percent (10%) or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure; Provided, however, that a Licensee shall not have to pay any costs of the verification procedure in excess of the amount of any underpayment unless the underpayment was more than twenty percent (20%) of the amount finally determined to be due from the Licensee and more than \$5,000.00.

### § 261.7 Verification of royalty payments.

(a) *General.* This section prescribes general rules pertaining to the verification by any Copyright Owner or Performer of royalty payments made by a Designated Agent; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or a Performer and a Designated Agent have agreed as to proper verification methods.